P 7-26-99

G. R. S. IX-5]

Previous references.

LR 50-88.
LR 91-93.

1897-98
192 .
(Land Rev.)

File No. 67-97

Serial Nos. 1-6

Later references.

GENERAL AND REVENUE SECRETARIAT

Serial Nos. 1-6.

In ~~Part~~ B for June 1900

SUBJECT.

Levy of fine on Singarkhatta for the Smuggling of Arrack ——

Countermarked
Syed Enaff

Inward

A report with the records of the case has been received. The facts as found by the Dy Commr are

(1) That seven carts laden with ~~500~~ 500 maunds of supari were found at a distance from the sayer Kalle al-S. Am on 30.1.97

(2) That till 5.30 P.M on 31.1.97 the kulawar chits were produced

(3) That at 5 P.M on 31.1.97 Kulawarchi for 141 maund were produced

(4) That the kulawar chits for the balance which were produced afterwards

P.T.O

Manual is not forthcoming
in this Office & is said to be
out of print

Two circulars one of 1840
& the other of 1858 have been
put up by the Govt Records.
It is under the latter notice
that the Dy Comm^r has
passed the order appealed
against.

In addition to the above
circulars I am RF 2549/2
of 23/12/93 reserving the
practice regarding examination of witnesses & cross-examination of deceased
the Govt is put up

= The Dy Comm^r's order
extending the punishment
for smuggling to "attempts
at smuggling" seems
to be unwarranted.
The circulars of 1840 & 1858
have the force of law

and have to be strictly construed

In all special laws under
where exists a special provision extending
the theory of "attempt" is the
offences under those laws there is
not the slightest legality for
punishing "attempts" whereas
apply to offences under the
Penal code

abetment" is made
applicable by the definition
"offence" in the Penal
Code

There is however the further
question whether the removal
of Supari in Kodi Kalvai
also is an offence

Under all these circumstances
relating to Sayer are stored
this Cannot be answered

A requisition was sent to
Govt Records some days ago
& the papers may be expected
shortly

Have been returned to submit a memo regarding the disposal of the papers

& disposal Govt Records

The file leading to the Judgment

Sol no 2287 S 22/8/95
P 453

is put up

Sol no 1737-45 S 13/8/97
R 572

is also put up

The pet order in Appeal no
501 of 25/5/91 (no 4 in
the Reps putup) seems to
show that the removal
of Lupa without Kulwa
Chul is an offence
(The file connected with
this order was not forth-
coming in 1895)

~~Papers not under~~
on the authority of this order,
the Dcomm's order in the
present case may be
justified

Papers relating to Jay's
have been but incompletely
received from the Secy Records.
but it is intended to print
the papers as far as they
are available

Thy 12/8/90

Subs to the Cr & Dr with
acts attached to the
petn 12/8/98

recd 12-8-98

233

Subs to 2nd Cr.
12/9/98

R 7.30 pm
3-9-98

From the facts the
Dy Com (Mr Lyell) but
on the trial of the ~~accused~~
has found that there
was both
is an intention and
an attempt to smuggle
the articles not in
question. The finding
seems ~~to have been~~ wholly
by the Counsel of the case
~~was~~ fairly warranted.
A large quantity of
Sugar was conveyed
in seven carts.
Apparently only of these
goods was covered
by Customs duties and
that Petr's omission to produce
any invoices in his
favour ~~of the Petr~~
on the ground of the
absence of any
~~invoices~~ express
direction or of any
clearly understood
or invariably acted
upon is unreasonable

Petr's remedy in this
case is by appeal
to the Governor in
Council

No child were, as a matter of fact, produced for two & three days after the seizure of the carts and ~~it is quite~~ this conduct of the Petr is not in compatible with the conclusion that he endeavoured to pass off a larger quantity of arecanut than the child warranted.

(c) The Petr entirely failed to account & explain his accused satisfactorily & the Dy Comrs finding must therefore be upheld -

This appeal is ~~rejected~~ dismissed

as it might presumed that the precaution which the Petr had taken for a part was abdi- -cated with whole - x This circ is sufficient to shift the burden of proving the Petr's honesty of purpose onto him and in this proceeding the Dy Comr has acted properly - ⊙

It is however necessary to lay down a clear rule that where arecanut is removed from the village wherein it is produced a ~~Rule~~ chit from the Talk should be obtained. The Dy Comrs ought asked to report their views & submit their proposals along on this point -

MMS

12/5/99

Vno Pt & Endt BR 16/5

Peter 16/5/99

R.67-97-1

1898 (1)

(1/2 R Stamp affixed

Order applied against is not produced but is only referred to as No. 111 of 26.7.97 copy of which was not obtained till 9.11.98

17.2.98

Name of Petitioner: Singa Bantia

Village: Kottegode

Taluk: Shimoga

District: Kadur

Date of Arzi: 22-1-98

Date of Receipt: 14-2-98 3/1/1

Date of Disposal:

No. of Enclosure: nil

(Copy back returned to Petitioner after taking down particulars)

ABSTRACT

Appeal against the order ... of the Personal ... Kadur dist - the order appealed against does not accompany the petition - The facts are as follows - The petitioner is a trader ... arecanuts for the purpose of collecting the arecanuts in Mooreshalli & neighbouring villages ... he employed a number of Coolies for transporting ...

Under-proper

111

24/11

26-2-98

Consignment to carts, loaded
at different places, the road
leading to the Surrounding
villages being inaccessible,
sending a Koolawar chit, each
time, with the details for the
quantity taken by them -
On 30-1-97, the Cartmen halted
at Suragunde near Sollebyle
for fetching grass to the bullocks -
which the Mouse
of Anwas Kalle arrived
the place questioned a the ca
man on some particular
which he was unable to
answer, nor did he pro
the Koolawar chit which
secured in a packet three
in the area nuts in one of
carts - the Sayer Immega
out of ill-will towards the
petitioner drew up a Mahazar
instantaneously reported
the matter to the Amildar -
The work of collecting area nuts
from the surrounding villages
being still incomplete, he next

on accumulating & transhipping as usual till the 4th February, leaving the carts to remain on the same place where the Sayer Mooneer found them when the accumulation was over, i-e 5 days after the alleged detection of fraudulent removal of paddy into attap, the carts were ordered to be brought before the Police Katcherry — the Moodeliar thereupon sent for the petitioner & Examined him, but did not order delivery of the goods. The petitioner applied to the D.C. Mannar, who directed that a Judicial enquiry be taken ~~the~~ & the goods delivered after recovering the proper duty —. Accordingly the petitioner preferred the Mutchalika, which was submitted along with other records to the D.C. Mannar for orders — The D.C. Mannar

On receipt of the records directed that double the duty on 38,3¼ Mds of Arecanut should be recovered from him besides a fine of 100 Rs for his omission to secure the required pass - Saiyad Bhatta accordingly paid Rs 407-6-4 out of which Rs 12-7-0 were returned to him on 25-9-97 without informing him the cause of the refund -

The grounds of appeal are

(1) That at the time of seizure of the carts by the Sayer Morgan, the required quantity of Arecanuts had not been collected as can be presumed by the fact that on 4-2-97 the carts were fully laden & were fit for removal -

(2) That the quantity seized was covered by a Kodaman-clith which the Cartmen failed to produce through ignorance - & the Sayer Morgan on his part failed to record the exact quantity seized by him

on 30-1-97-

(3) That in connection with a complaint of the petitioner against the Manager in 1895-96 for having refused to give a railway receipt without, re-munerating the Manager all the other Managers keep personal purse towards the petitioner, & consequently complied of this false case against him -

(4) That the carts had been left within the distance of 1/2 mile from the Customs office without a receipt letter being taken for payment of proper duties when the full consignment had been loaded in each of the carts -

(5) That in spite of the above circumstances the Dy Comm. has unjustly fined him & levied Rs 1000 the duty —

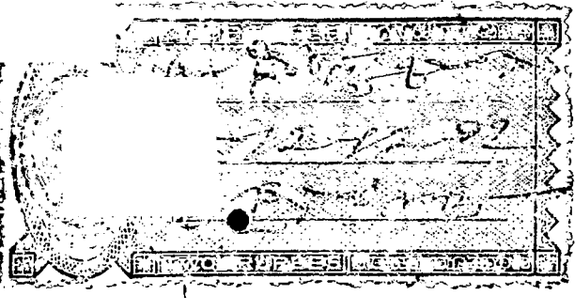
P.T.O

that delay in filing the
appeal was due to the non
compliance of the copy
of the order applied for by
him Ann 9-11-97

Prays that equitable order
may be passed in a
favour of the Petitioner

16/2/98

A report in the record of the
case has been received
The facts as found by the Board
are
(1) That seven casks laden with
about 500 maunds of Sapari
were found at a distance from
the Sayer Kalta on at 8 AM
on 30/1/97
(2) That till 5.30 PM on 31/1/97
No Kulwa Casks were produced
(3) That at 5.30 PM on 31/1/97
Kulwa Casks for 141 maunds × dated Sone 28/11/97 & Done 12/99
were produced (Sno 14 V Record)
(4) That the Kulwa casks for the
balance, which were produced afterwards



2076 23-1-1899
(Sringeri)

L.R. 67-97-2

MYSORE DEWAN'S OFFICE
PETITION DEPARTMENT
REG'D. NO. 2076R
DATE 14-2-98

To

The Dewan to His Highness
the Maharajah of Mysore

Appeal Petition of Sangabhatta
son of Krishnabhatta, residing
at Koothgode village, Sringeri
jaghir, Kadur District. —

This is an appeal against
the order of the Deputy Commissioner
of Kadur, Revenue No. 111 26.7.97 being
an endorsement to the Kopja
Taluk Amildar's Number 154
18.6.97.

2 The facts of the case are as follows:-

(1) In the month of January 1897,
I was loading carts with areca-
nut, mentioned in the aforesaid
order for the purpose of taking
in the Mavvalli and Inginda
bagaries of the Kopja Taluk
of the Kadur District. There are
no good roads for carts to go
by, leading to the village in which

I was loading timber with Arca-
lenk, &c, from 15-1-97 to 4-2-97
I was having the Carts loaded
with timber by means of Coolies
who Carried them from the places
by virtue of a "koolwar" Chit
as far as the places where Car-
-riages could have, and were then
loading the Carts with them. In
the meanwhile, any of the Carts
which were loaded with timber
were not quite full, they stopped
on the road in different places
and used to carry them filled with
loads which had been Carried
by Coolies everyday. On 30-1-97,
my Cartmen stopped the Carts
and objected on the public Govern-
-ment road at a place called
Nirapanda near Sollebyle. When
on that day the hirers of these
Cartmen went to a village near
where the Carts stopped for grass
for the oxen, the "Sanegar" of
"Nirmaw Kutte" in Nirapanda
by name of Sollebyle Gowda of
said

Mahabaleshwar

And asked some one of the Carters some questions, the latter being quite an ignorant man and not being aware that the man was a "Layan Inamgar", did not give him proper replies to his questions. He did not also forthwith deliver the "Kodaver Dist" which was then kept in a Cart package among the carts in one of the Carts on behalf of the owner of the Carts. The said "Inamgar" immediately out of enmity towards me, seized all my Carts, unjustly wrote a Inamgir to the effect that the carts which were in the Carts were things mentioned in the Kodaver Dist and forthwith ejected the Carters & the Servants of the place. The Carts were at that time on that road. At that time, my Coolies, were, from the 31st January 1897 to 7th February 1897, every day Carrying

loads of bark from the adjoining villages by native of a "Kool-bee Chief" and loading the way Some Bark with them on the way Some goes. By the 4th of February 1897 all the Bark were loaded for me. After this time, viz, about 5 days from this date, all my Bark were, by order of the Chiefs, sent to Manikan for Cash and all the bark kept in the Interior.

(2) I was upon the Chiefs sent for me and examined me, but he did not hand over my things to me as I was after this, I petitioned to the Deputy Commissioner of the district who issued an order that I should divide it "Imochalika", then he made me write it Imochalika and delivered over the bark to me on payment of the proper Charges.

(3) All the records in this Case were then brought to the Secretary Comm[illegible]

Mr. Ag. Secretary

Commissioner's office from the Amildar's office and the former passed the above order to the effect that I should pay double Charges on 3 87 31/4 kandis out of the whole quantity and pay a fine of Rs 100—. Of this, I paid on 11.9.97 the additional Charges and the fine, amounting in all to Rs 107-0-4, through the Linder of Shirgeri and obtained a receipt for the same in 47 11.9.97. On 25-9-97 the sum of Rs 27.0 was remitted to me, I do not know why.

3. The grounds of appeal are:—

(1) On 30.9.97, when the bargar seized the goods, Carts, the Carts were not quite filled with Ants, as stated above. They were only being loaded. When we got of the Ants, the Carts were being loaded with Ants which were Carried to the Carts through the Patil's Chit Only by means of a Tolare Chit

Between 30 & 37, there were Kaelaren Chiefs for several days of the week & were then in the Camp. After the 37th, the Canoes were loaded with Nuts brought by virtue of a Kaelaren Chief by the Natives.—

(2) This being the Case, the Interpreter on being correctly informed, asserted that Nuts were brought by the Natives & Kaelaren Chiefs, according to what he asserted, the 3737½ Thousands of Nuts were brought on the 30th without a Kaelaren Chief they would have been examined & the right ascertained by the Interpreter. From this, it is evident that these people told lies, as they did not make the proper search. If that was so, they said untruly that the Nuts were brought on the 30th after they were in the beginning.—

(3). There is surely better evidence than the Interpreter. The testimony of

Mrs Jane Boag (Ex)

of this is the following:- I re-
-ported personally to the Amildar
of this Taluk that the "Sajan
Manegar" of this Taluk was
in the habit of taking bribes from
the merchants on all accounts
brought to his Custom office
for the purpose of a Paladari
at the rate of Rs 2/- on Rs 100/-
over and above the Lawful, rates
fixed by Government. However
I lodged a Complaint against
one who asked bribes from me
for the Manegar. On this ac-
-count all the Manegars of this
Taluk owe me a grudge, among
these is also the Manegar who
seized my Accounts. Thus when
they went to his office to obtain
a paladari" on my account
for my Accounts, he did not
give me a "paladari" at once.
When he asked for bribes in the
manner stated above, my Carmen
refused to give them: The "Manegar"

therefore did not give them the
preference. Immediately I
came to know of this Order I
the Carts to the Bank Cutcherry.
I paid upon the Cargoes on
the hulks, obtained a Cash book
from the Treasury office there and
kept by Mr. Conroy. This
occurred in this way in 1895-96,
evidence of which is to be seen
in the Bank Records. Even since
that time, I and the Serangani have
been on the board of trade.

(4) Besides, the above mentioned
Measures had not passed beyond
the place where the duties were to
be paid namely — the Imperial
Customs office in Calicut Harbour.
When the Carts were only at a
distance of 1 mile from the office,
they stopped on the public road.
That is to say, as these Carts were
not yet full and as they had to be
filled with rubbish which were
available

Mr. Conroy

available in the villages, it is evident that the Carmen stopped them on the public road with the intention of filing them and then proceeding further to the Customs office, paying off the proper charges on the same, obtaining a pakasbari and then going their way, and not satisfied with any intention of defending the authorities.—

(5) Such being the case, as I have stated above, the order of the Deputy Commissioner is against both law and justice. He said in the second page of his order that he was of opinion that there was an attempt at rescuing.— But there is not the slightest evidence or reason to justify such an opinion.—

(6) The Cause of this unjust order was chiefly to smooth that exists between me and

the Condon above mentioned.

(7) I delayed filing the petition immediately as I could not obtain a Copy of the order above mentioned. I have made this application now, as I got the Copy on 9 11 97.

4 In Conclusion I pray that this Honorable Court may be pleased to hold an Inquiry into this Cause and take into serious Consideration all the details mentioned above, Chiefly the order of the Executive & the deputy Commissioner and to declare to be the additional Charges preferred on the five heads aforesaid.

Mohammad Hussain

Refer

19/4/98

2076 of 77 Court fee Rs

Filed

20/4/98

Exhibit

(1) Rs Stamp affixed to
enclosed petn no 2071
Stamp Duty

(2) Order appealed against
is dtd 26.7.97 - The
appeal was filed on 31/11/97
Feb 98 i.e. thus
out of time by more
than 3 months
But the petr states in his petn
21/4/98 that he obtained a copy of
the order on 9/11/97 while the
petn was received on 31/11/97
Hence the appeal seems to be
within time (as the order appealed
against was addressed to and duly
(3) appeal against Assessment order
during the levy / double the
Assessment - of
Rs on a Consignment - of
Accounts & A fine of 100 Rs in
addition
(4) Notice Counsel list
The petr gives a long account of his
case but the facts on the other
side are not given in the order
Petitioner

Rs 7.5 Rec
23.4.98

23/4/98

On Call for records from the
Hy 26/4/98 received record
26/4/98

No. 2549 1898 (2)

Name of Petitioner Kaiga Sinita

Village Koilagodu

Taluk Sirsi

District Kadur

Date of Arst 5-4-98

Date of Receipt 15-4-98

Date of Disposa

No. of Enclosure one

ABSTRACT

Copy of Kadur Asst. Com
order No: III 26-7-97 to
Petition of Kaiga Sin
with his reference to

Under the foregoing cir
-cumstances I am of opin
that there has been
attempt at deceit. Accord
to section #5-11 of the C.P.C
Commission of an act or
an attempt to con
the case is liable to punis
-ment - Kaiga Sinita shou
therefore, pay double the du
on the Consignment - Re

further directed to, pay a
fine of Rs 100/- The fine should
be recovered and credited -
The records are returned"

=

Writ, reference to Govt. Instr.
no 2076 dt 26-2-98 & writ
reference to his appeal petition
dated 22-1-98, submits the
copy of the dep: Commrs order
no: 111 dt 26-7-97

Prays that the dep: Commrs
order may be set aside
on the grounds set forth in the
appeal petition -

26/4/98

2549

MYSORE DEPARTMENT'S OFFICE
REGD. No 2549/98
DATE 15-4-98

Pet 1343 P2 (3) 18

MYSORE DEWAN'S OFFICE.

ITION DEPARTMI

OFFICIAL MEMORANDUM.

The accompanying Appeal Petition &
05207 dated 25-3 dated 22-1-9
received at the Dewan's Office, from
Singe Bhatta of Kutugodu
village with Singhi Jo
appealing against the ord
of the Deputy Commissioner of
directing the levy of double
duty on a consignment of a
camels and a pair of Rs 1000
in addition,
are forwarded, together with its enclosure,
enclosures, to the Deputy Commissioner
of Kadur District
for submission of the entire proceedings
connected with the case, together with a
full report of the facts of the case, and on
the points urged in the petition.

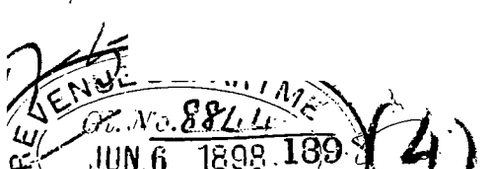
2. The petitions with its enclosure
should be returned.

28-4-98

By order,

Secretary.

BANGALORE,
30-4-1898
2-5



(4)

To The Secretary to Govt
General and Revenue

Dated 31st May

Despatched 2nd June

Received

General No. 767
No.

Enclosure No. Ver Memorio.

Reporting on the petition of Singaranatti of Irugode village Singeri jahagir, appealing against the order of the Deputy Commissioner, Bellary District, directing the levy of double the duty on a consignment of arrack and a fine of Rs. 25/- in addition.

Petition M
4-6-98

Subject

Ack
9/6/98

Subd

May
10/6/98

To put up the Excise Manual from the Secl Records

Ky 20/6/98

To Genl. R. for compliance with reference to the above remark of the Excise Secy

Ack
20/6/98

Rec: Br.
Please put up a copy of the Excise Manual.

Ack
20/6/98 Ky 20/6/98

Ack
6/7/98

Subs to 2nd Consultn with a note attached to the petn Ky 6/7/98

7.30 am.
6.7.98.

I decided a similar case some time ago - let me see if I can find it - perhaps also a general order issued in the subject. Kept in the year Bundle
Ky 7/7/98

Chikmagalur
31st May 1898

From

The Deputy Commissioner
Kadur District

To

The Secretary to Government
General and Revenue Dept.

Sir,

In reply to the Government Official Memorandum No 1343 dated 30th Ultimo, forwarding for report petition received from Lingadhari of Hirigoal village in the Hirigeri Jahagir, appealing against the Deputy Commissioner's order, directing the levy of double the Sayer duty on a consignment of arecanut and a fine of Rs 100/- in addition, I have the honor to submit the following report:-

2 The manager of the Meganola Sayer Datte, resident of the Shanta Anildar, on 31st January 1897, that 7 candy containing betel, which one Bhutgode Lingadhari had collected in the village attached to Meganola Datte had been left on the banks of the stream near Kallehile at 8 a.m. on the 30th January 1897; that on his (manager's) enquiring from the carters, he was informed that there might

be

be about 500 maunds of Kukani; that the Kulwar Chiō were with the Sahukar; that though he waited till 8 a.m. on the 31st January 1897, neither the merchants appeared nor were the Kulwar Chiō produced.

3. The Manager was directed by the Amildar to send the consignment to the Taluk Kacheri, after taking a proper record of the Kukani in case the Kulwar Chiō had not been produced, and in case the Kulwar Chiō were produced and the delay satisfactorily accounted for, to issue Rahadaries.

4. The Manager on 1st February 97 reported that for 40-20, 4 Kulwar Chiō were produced by a Cartman at 5-30 P.m. on 31st January '97 and that for the rest of the consignment, no Kulwar Chiō were forthcoming.

5. The Manager was ordered to detain the consignment and to enquire and report, after the owner appeared, regarding the non-production of the Kulwar Chiō and the delay in producing the consignment for

Shalaka (weighment for livery of duty).

6. The manager on 8th February 1897 reported that with the exception of 4 chits for 1st Nov. to 20th Nov., no Railway chits were produced for the rest of the consignment, and that on enquiring from the Patels of 4 different villages where the Sepoy was alleged to have collected by Dingaishah, the details of the consignment were found to be as follows:—

(1) As per chit No. 5 and dated 31-1-97 Negar village	}	177 - 9 - 24
(2) As per chit No. dated 1-2-97 Halgaedi village	}	133 - 22 - 12
(3) As per chit No. dated 2-2-97 Hanalane village	}	47 - 20 - 4
(4) As per chit No. 4 dated 2-2-97 Bhainedwara village	}	29 - 17 - 12
Total		387 - 30 - 4

This was discovered upon reference to the accounts of the Railway chits with the Patels.

7. The Auditor in reporting on the above stated that (a) the cases with the Sepoy consignment had not been

been carried by Kulwar Chib in transit, (ii) the Chib for M.S. 40-20 were produced on 31-1-97, i.e. one day after the arrival of Sheikh (30-1-97), (c) the Kulwar Chib for M.S. 337-30 were not produced through the manager until for him, (ii) the owner Singabhatti had not produced the consignment for bail. They went to Sirsi with Sapari on 30-1-97, were left on the bank of the stream near Sirsi, the Kulwar Chib were made out one, two or three days after the arrival of the Court at Sirsi which shows that the Sapari was collected and removed by Singabhatti before Chib were actually obtained.

The Amildar reported orders as regards the disposal of M.S. 337-30 of the article, received without Kulwar Chib, as it was contrary to the standing orders, viz: that Sapari should never be removed without Kulwar Chib.

8. The Amildar was directed to collect Singabhatti to explain his conduct in removing Sapari on 30-1-97 and obtaining Kulwar Chib,

which have date 31-1-97, 1-2-97 and 2-2-97, i.e., after the consignment had been removed.

9. Singabhai stated before the Arbitrator that he expected to collect the sum he collected on the occasion — once on the 31st from Rachan-kadgi by one, twice, and the other on 2-2-97 by another, namely, that he collected the moneys and went to the Patels to get Kulwas Chit, that the Patels who were supposed to have gone to the Kalukoffice with Kandayam returned on the 1st and 2nd February 1897, that the two got Kulwas Chits and went there with the cartmen, Hoseinkhan, that all the cartmen, through ignorance, drove their carts on, and that there were two Chits for only two made and for the next the next Chit afterwards.

10. The Arbitrator in forwarding the statement of Singabhai, rejected that the statement of Singabhai to the effect that the consignment was sent in parts, once on 31-1-97 and again on 2-2-97, was not worthy of credit.

credit, as some chits were dated 2-2-97; and that the prisoner had in amanat (seizure), viz: 387-30 might be released after levying double the amount of duty, which he thought would be a sufficient punishment.

11. Mr Weir made the following observations:

"If seems sufficient to say that there was anything more than an irregularity in moving the Sujani without the necessary Customs chits, that the Sujani was, or seemed to be clear. The object however of the rule is of course to prevent smuggling, and a person who evades a rule of this kind may be presumed to intend to defeat the rule, i.e. in this case to smuggle. I think therefore the offence has the character which would seem to mean that the intention was not what it may be presumed to be".

The Accused was directed to call upon Singaléhari to show cause why

the Defendant under seizure should not make the said arrest and the Writ of Execution issued in the said cause be set aside with costs.

12. Bingabhai attempted to explain away this portion of his statement that the Defendant was not consulted at all about the sale, but this was denied by Chilo. The Court disbelieved Bingabhai's statement as to be believed, that the receipt some of which were obtained, should the Kulwa Chilo were not obtained so soon as the Defendant was purchased from the Plaintiff. The dates of the receipts produced by Bingabhai were between 16-1-97 and 25-1-97, while those of the Kulwa Chilo between 31-1-97 to 5-2-97, adding that there was no doubt that before Kulwa Chilo were obtained Bingabhai had taken possession of, or carried in one lot, in disregard of Government rules, that if he had obtained Kulwa Chilo and sent them as alleged, there was no necessity for the Manager to make a seizure of the articles, assuming that the article was seized without

without any reason, nothing could have prevented Singaraiah from bringing the same to the notice of higher authorities, and that he was indifferent over the matter through investigation was being made at the time.

13. Mr. Weir, the vice deputy commissioner, passed the following observations:-

"It is clear that Singaraiah has made false statements in saying that he sent the cards at different times and with Sirdar Chik between 31st January and 2nd February. The magistrate in his report, does not mention that all the 7 cards were given to Sirdar Chik to be handed over to the Inspector on the evening of 30th January and with Sirdar Chik. It may, after I think be concluded that there was an intention and an attempt to smuggle, but there was actual smuggling, as the cards never passed the Police."

After giving the Standing order on the subject he passed the following final order on 24th July 1917:-

to already applied, I shall have no alternative but to charge you with attempting to smuggle and on the analogy of the general penal law (Section 511 I.P.C) an attempt to commit a crime is punishable to the same extent as the crime itself is liable to punishment. I am accordingly that Lingabhatta do pay double the amount of the Gold Ordinary duty on the Cheroot together with Rs. 200/- Rs. 200/-"

The Government has appealed of Lingabhatta against this order.

5. The appeal petition and the enclosures received with the Government memo under reference to the remarks petitioned and the Verma enclosures correspondence to enclose for reference and favour of return when no longer required.

I have the honour to be,

Sir,

Your most obedient servant

D.C.M.

Asst. Commissioner
Kodaikanal Division

LR 67-97-L Draft for approval. Proceedings to Secretary 3-6-98

(6) C. Elsore

Read:-

Petition of appeal No. 2076 dated 22-1-98, presented by Singa Bhatta of Kootugode Village in the Sringeri Jagir, against the order of the Dy. Comr. Kadur Dt., directing the levy of double the assessment duly on a consignment of arecanuts confiscated by Kulwanchits and a fine of Rs.100/- in addition.

Letter No. 457 dated 31st May 1998, from the Dy. Comr., Kadur Dt. reporting on the above.

(Here enter the letter in extenso)

x x x x x x x x.

The records of the case.

9150-57

Order Memo No. 1934 9/12/98 3/12/98

Perused the facts of the case, wherein the Dy. Comr. (Mr. Klein) has found that, on the part of the petitioners, there was

was both an intention
and an attempt to
smuggle the arecanuts
in question. The finding
is fairly supported by the
circumstances of the case.
A large quantity of Supari
was conveyed in seven
carts. A portion only of
these goods was covered
by Customs chits and the
petitioner's omission to produce
chits for the remainder
has not been accounted
for. Any inference in his
favour, on the ground of
the absence of any express
direction or of any usage
clearly understood or
invariably acted upon,
is impossible, and it
might be safely presumed
that the precautions which
the petr had taken for a
part was applicable to
the whole. No chits were
as a matter of fact, produced
for two or three days after
the seizure of the carts
and this conduct of the
petr is not incompatible
with the conclusion that

he

he endeavoured to pass
off a larger quantity of
arecanut than the chits
warranted. This circums-
tance is sufficient to
shift the burden of
proving the petr's honesty
of purpose on him and
in this proceeding the
Govt: consider that the
Dy Comr has acted pro-
perly. The petr entirely
failed to explain his
conduct satisfactorily
and the Dy Comr's finding
is accor must therefore
be upheld. The appeal
is dismissed accordingly.

Court however ob-
serve that it is ne-
cessary to lay down a
clear rule that before
arecanut is removed
from the village wherein
it is produced, a chit
from the patel should
be obtained. The Dy:s
Comrs of Districts are
requested to state
their views and submit
their

their proposals clearly
one point

12.5.99.

4/6/99

Secretary

18.5.99 3.6.99

1. The Dy Comm Kadur to
(1) with records.

ಸಂಖ್ಯೆ-ಕೆ-ಸಂಚಿಕೆ
ದಿ 12-6-99ರಂದು ಕಳುಹಿಸಿ

(2). The Dy Comm of
other Dists.

Press copy
sent up
13/6 Sent 13/6

(6)

Proceedings of the Government of Mysore,

READ—

(1) Petition of Appeal No. 2076, dated 22nd January 1898, presented by Singabhatta of Kutugode village in the Sringeri jahgir, against the order of the Deputy Commissioner, Kadur district, directing the levy of double the duty on a consignment of arecanut uncovered by kulwar chits and a fine of Rs. 100 in addition.

(2) Letter No. 757, dated 31st May 1898, from the Deputy Commissioner, Kadur district, reporting on the above as follows :—

In reply to the Government Official Memorandum No. Pt.—1343, dated 30th ultimo, forwarding for report petitions received from Singabhatta of Kutugode village in the Sringeri jahgir, appealing against the Deputy Commissioner's order directing the levy of double the sayer duty on a consignment of arecanut and a fine of Rs. 100 in addition, I have the honor to submit the following report :—

2. The manegar of the Megunda Sayerkatte reported to the Koppa Amildar, on 31st January 1897, that seven carts containing supari, which one Kutugode Singabhatta had collected in the villages attached to Megunda Katte, had been left on the banks of the stream near Sollebile at 8 A. M., on the 30th January 1897; that on his (manegar's) enquiring from the cartmen, he was informed that there might be about 500 maunds of supari, that the kulwar chits were with the sahukar; that though he waited till 8 A. M., on the 31st January 1897, neither the merchants appeared, nor were the kulwar chits produced.

3. The manegar was directed by the Amildar to send the consignment to the taluk cutcherry, after taking a proper record of the supari in case the kulwar chits had not been produced, and in case the kulwar chits were produced and the delay satisfactorily accounted for, to issue rahadaries.

4. The manegar on 1st February 1897 reported that for 140 maunds 20 seers, four kulwar chits were produced by a cartman at 5-30 P. M., on 31st January 1897, and that for the rest of the consignment, no kulwar chits were forthcoming.

5. The manegar was ordered to detain the consignment and to enquire and report, after the owner appeared, regarding the non-production of the kulwar chits and the delay in producing the consignment for *halat* (weighment for levy of duty).

6. The manegar on 8th February 1897 reported that with the exception of four chits for 140 maunds 20 seers, no kulwar chits were produced for the rest of the consignment, and that on enquiring from the patels of four different villages, where the supari was alleged to have been collected by Singabhatta, the details of the consignment were found to be as follows :—

		Maunds.	Seers.	Tolas.
(1)	As per chits Nos. 6 & 7, dated 31st January 1897, Heggar village ...	177	9	24
(2)	As per chit No. 11, dated 1st February 1897, Hulgardi village	133	22	12
(3)	Do No. 5, dated 2nd February 1897, Haralave village ...	47	20	0
(4)	Do No. 4, dated 2nd February 1897, Bhairedevaru village ...	29	17	12
	Total ...	387	30	0

This was discovered upon reference to the accounts of kulwar chits with the patels.

7. The Amildar in reporting on the above, stated that (*a*) the carts with the supari consignment had not been covered by kulwar chits in transit, (*b*) the chits for 140 maunds 20 seers were produced on 31st January 1897, *i. e.*, one day after the arrival of carts (30th January 1897), (*c*) the kulwar chits for 387 maunds 30 seers were not produced, though the manegar waited for them, (*d*) the owner, Singabhatta, had not presented the consignment for *halat*. The seven carts, laden with supari on 30th January 1897, were left on the bank of the stream near Sollebile; the kulwar chits were made out one, two or three days after the arrival of the carts at Sollebile, which shows that the supari was collected and removed by Singabhatta before chits were actually obtained.

The Amildar requested orders as regards the disposal of 387 maunds 30 seers of the article received without kulwar chits, as it was contrary to the standing orders, *viz.*, that supari should never be removed without kulwar chits.

8. The Amildar was directed to call on Singabhatta to explain his conduct in removing supari on the 30th January 1897 and obtaining kulwar chits, which bore dates 31st January 1897, 1st February 1897 and 2nd February 1897, *i. e.*, after the consignment had been removed.

9. Singabhatta stated before the Amildar that he exported to Sollebile the supari he collected on two occasions,—once on the 31st from Bachankodgi by one route, and the other on 2nd February 1897 by another route; that he collected the produce and went to the patels to get kulwar chits, that the patels who were found to have gone to the taluk office with kandayam returned on the 1st and 2nd February 1897; that he then got kulwar

chits and sent them with his cartman, Husain Sab; that all the cartmen, through ignorance, drove their carts on; and that there were thus chits for only 140 maunds, and for the rest he sent chits afterwards.

10. The Amildar, in forwarding the statement of Singabhatta, reported that the statement of Singabhatta to the effect that the consignment was sent in parts, once on 31st January 1897 and again on 2nd February 1897, was not worthy of credit, as some chits were dated 2nd February 1897; and that the produce held in *amanat* (seizure), *viz.*, 387 maunds 30 seers, might be released after levying double the amount of duty, which he thought would be a sufficient punishment.

11. Mr. Weir made the following observations :—

> "It seems at first sight difficult to say that there was anything more than an "irregularity in moving the supari without the necessary kulwar chits; that "the supari was so removed is clear. The object, however, of the rule is of "course to prevent smuggling, and a person who evades a rule of this kind "may be presumed to intend to defeat the rule, *i. e.*, in this case to smuggle. "I think therefore the offender has the burden thrown on him to show that "his intention was not what it may be presumed to be."

The Amildar was directed to call upon Singabhatta to show cause why the supari under seizure should not be treated as smuggled article and dealt with as such under the rules in force.

12. Singabhatta attempted to explain, adhering to his former statement, that the supari was not conveyed all at once, but twice and covered by chits. The Amildar reported that Singabhatta's statement was not to be believed, that the receipts, some of which were obtained, showed that the kulwar chits were not obtained as soon as supari was purchased from the raiyats. The dates of receipts produced by Singabhatta were between 16th January 1897 and 28th January 1897, while those of the kulwar chits were between 31st January 1897 to 2nd February 1897; adding that there was no doubt that before kulwar chits were obtained supari had been removed or carted in one lot, in disregard of Government rules; that if he had obtained kulwar chits and sent them as alleged, there was no necessity for the manegar to make a seizure of the article; that assuming that the article was seized without any reason, nothing could have prevented Singabhatta from bringing the same to the notice of the higher authorities; and that he was indifferent over the matter, though investigation was being made at the time.

13. Mr. Weir, the then Deputy Commissioner, passed the following observation :—

> "It is clear that Singabhatta has made false statements in saying that he sent the "carts at different times and with kulwar chits between 31st January and "2nd February. The mahazar as well as the manegar's first report show "conclusively that all the seven carts were at Sollebile with 500 maunds or "so of supari on the evening of 30th January and without kulwar chits. "It may safely, I think, be concluded that there was an intention and an "*attempt to smuggle*, but there was no actual smuggling, as the carts never "passed the katte." * * * *

14. After perusing the standing orders on the subject, he passed the following final order on 24th July 1897 :—

> "As already stated, I hold that there was clearly an attempt to smuggle, and on "the analogy of the general penal law (Section 511, Indian Penal Code) an "attempt as well as a completed act render the prisoner guilty of it liable to "punishment. The order will accordingly be that Singabhatta do pay "double the amount of the *halat* ordinarily due on the supari together "with a fine of Rs. 100".

The present appeal of Singabhatta is against this order.

15. The appeal petition and its enclosures received with the Government Memo under reference is herewith returned, and the vernacular correspondence is enclosed for reference and favor of return when no longer required.

(3) The records of the case.

No. 9150-57—PET. 934, DATED BANGALORE, 12TH JUNE 1899.

ORDER THEREON.—The facts of the case are that the Deputy Commissioner (Mr. Weir) found that, on the part of the petitioner, there was both an intention and an attempt to smuggle the arecanut in question. The finding is fairly supported by the circumstances of the case. A large quantity of supari was conveyed in seven carts. A portion only of these goods was covered by kulwar chits, and the petitioner's omission to produce chits for the remainder has not

Petition, dated 12th June 1899.

been accounted for. Any inference in his favor, on the ground of the absence of any express direction or of any usage clearly understood or invariably acted upon, is impossible, as it might be safely presumed that the precaution which the petitioner had taken for a part was applicable to the whole. No chits were, as a matter of fact, produced for two or three days after the seizure of the carts, and this conduct of the petitioner is not incompatible with the conclusion that he endeavoured to pass off a larger quantity of arecanut than the chits warranted. This circumstance is sufficient to shift the burden of proving the petitioner's honesty of purpose on him, and in thus proceeding, the Government consider that the Deputy Commissioner has acted properly. The petitioner entirely failed to explain his conduct satisfactorily, and the Deputy Commissioner's finding must therefore be upheld. The appeal is dismissed accordingly.

2. Government, however, observe that it is necessary to lay down a clear rule that before arecanut is removed from the village wherein it is produced, a chit from the patel should be obtained. The Deputy Commissioners of Districts are requested to state their views and submit their proposals clearly on this point.

C. SREENIVASIENGAR,
Secy. to Govt., Gen. & Rev. Depts.

To—The Deputy Commissioner, Kadur District, with records.
The Deputy Commissioners of other Districts.

Exd.—C.V.

(6)

1898-99 •

GOVERNMENT OF MYSORE

PETITION

PROCEEDINGS

Dated 12th June 1899

No. 9150-57
Pet. 934

Upholding the order of the Deputy Commissioner, fining Singabhatta of Kutugode village in the Sringeri jahgir, Rs. 100 in addition to levying double the duty, for attempting to smuggle a larger quantity of arecanut than that covered by a chit, and requesting the views of the Deputy Commissioners of Districts on the proposed ruling that chits should be obtained from the patel of the village before removing the arecanut produced therein.

SBP—22-6-99—200

LR 67-11-7

(5)

12-6-79

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